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Real Property

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changing any of the *terms* of the judgment. It ruled the new judgment was void as an obvious attempt to "revive the time for taking an appeal" and dismissed the appeal. RCW 4.32.050 expressly provides: "[T]ime for bringing . . . appeal shall in no case be enlarged, or a party permitted to bring such . . . appeal after the time therefor has expired."

This is in accord with the view taken by courts which have considered similar "vacations." Cases are collected in 89 A.L.R. 941 (1933) and 149 A.L.R. 741 (1944).

Service of Process—Leaving Papers in Unattended Office. In *Rohr v. Baker,* 52 Wn.2d 903, 329 P.2d 848 (1958), service of a motion for default was effected by the process server's pushing the documents through the mail slot of the locked office door of defendant's counsel.

The Washington court reversed dismissal of a petition to vacate the default based on the form of service, stating that "this was no service at all," under RCW 4.28.240. This statute permits papers to be served upon an attorney (in those situations in which such service is allowed) by leaving them in a conspicuous place in his office if there is no person in the office, but requires that they be left at the attorney's residence if the office "is not open to admit of such service."

By this decision the court apparently reversed *Spencer v. Arlington,* 54 Wash. 259, 103 Pac. 30 (1909), which was not cited in the brief of either party or discussed by the court.

In the *Spencer* case the court held that service made by dropping the papers through an open transom above the locked door of appellant's counsel's office was a valid service within the requirements of the same statute. There an additional factor was shown: respondent's counsel had seen the papers on a desk in the office of appellant's counsel the day following the service. But the court's language broadly approved such a service, even in the absence of that factor. The court rejected the contention that because the door was locked the office was not "open to admit of such service" (by placing in a conspicuous place within the office), saying: "[I]t seems to us that the office was sufficiently open to admit of service by leaving the notice in a conspicuous place therein if that could be easily accomplished by the use of any opening into the office." The court further stated in the *Spencer* case: "It seems to us that on the floor, and immediately in front of the door on the inside, is a very conspicuous place. Indeed it is not easy to conceive of a place in the ordinary law office more conspicuous."

Because the *Rohr* case reached a result contrary to the *Spencer* case on facts substantially similar, it seems to represent a shift in the interpretation of RCW 4.28.240. However, it must be noted that the court appears not to have considered the *Spencer* case.

REAL PROPERTY

Easements—Rights of Nonabutting Property Owners. In *Capitol Hill Methodist Church v. City of Seattle,*[1] nonabutting property owners sought to enjoin (1) the vacation of East John Street between Fifteenth and Sixteenth Avenues north in Seattle, and (2) the obstruction of that street by the co-defendant, Group Health, Inc. The plaintiffs and the defendants allegedly purchased from a common grantor in reliance on a plat delineating East John Street as dedicated to

[1] 52 Wn.2d 359, 324 P.2d 1113 (1958).

public use. Plaintiffs alleged this street was a main path of ingress and egress of their property and that vacation of it would deprive them of the most direct and convenient access to their property. The Washington Supreme Court affirmed a summary judgment for the defendants,[2] holding that as nonabutting owners, plaintiffs could not question vacation by the city since their access was not destroyed nor substantially affected. In holding that the plaintiffs could not complain of the vacation in the absence of collusion, fraud, or *interference of a vested right,*[3] the court considered the vested rights in the plaintiffs as under vacation statutes[4] only and failed to discuss whether there existed such rights in a private easement appurtenant to the land. To establish whether such an easement exists, the nature and means of creation of that easement must be examined.

It is settled that parties who purchase from a common grantor in reliance on a recorded plat acquire a private easement for the purpose of access over the streets and alleys abutting their property.[5] However, American jurisdictions are not in harmony as to the rights of those purchasers.[6]

There are two distinct lines of reasoning as to the type of easement created from such reliance on a map or plat. The first is an appurtenant easement by implication. This easement is implied by the court to give recognition to the apparent intent of the parties.[7] When the vendee, in a bargain and sale transaction, relies on the representations of a plat or map referred to in the deed, an easement arises for those streets delineated on the plat or map. An easement which is appurtenant to the land is conveyed with it by deed, notwithstanding no mention of the easement in the conveyance.[8]

On the other hand, a grantor may be estopped from denying an easement to his grantee, and common grantees as among themselves are estopped to deny the existence of an easement for ingress and egress to their property.[9] This easement by estoppel does not under all cir-

[2] See casenote, page 204, this issue.

[3] Taft v. Washington Mut. Sav. Bank, 127 Wash. 503, 221 Pac. 604 (1923).

[4] RCW 35.79, pertaining to vacation by the city, and RCW 36.87, pertaining to vacation by the county.

[5] 2 THOMPSON, REAL PROPERTY 34 n. 87 (1939); Annot. 7 A.L.R.2d 608 (1949); Howell v. King County, 16 Wn.2d 557, 134 P.2d 80 (1943).

[6] 2 THOMPSON, REAL PROPERTY 37 (1939); Annot. 7 A.L.R.2d 608, 610 (1949).

[7] 3 POWELL, REAL PROPERTY 412, n. 35 (1949), criticizing the use of the term "easement by estoppel" in Burkhard v. Bowen, 32 Wn.2d 613, 203 P.2d 361 (1949).

[8] 1 THOMPSON, REAL PROPERTY 537 (1939).

[9] 3 TIFFANY, REAL PROPERTY 311 (3d ed. 1939).

cumstances pass with the land but only will pass to one who can trace his title through a common grantee back to the common grantor.

Once having established that an easement exists, the next step is to define its scope. No jurisdiction has gone so far as to hold that a nonabutting property owner has no private right of user or easement in streets and alleys delineated on the plat or map referred to in his deed.[10] Three separate views have been developed as to the definition of such a right.[11] The first view, called the "broad" or "unity" rule, states that the grantee's private easement extends to all streets, alleys, parks, or other open areas described on the plat. The second view, called the "beneficial" or "complete enjoyment" rule, limits the grantee's private right of user or easement to those streets and alleys that are reasonably or materially beneficial to the grantee, deprivation of access to which would reduce the value of his lot. The final theory is called the "narrow" or "necessary" rule. Its application limits the private easement to abutting streets and such others as are necessary to give the grantee reasonable access to a public highway.

The Washington court has never clearly defined what rights the nonabutting property owner has by way of a private easement. However, the court has held that abutting property owners have a right of private easement enforceable against other common grantees.[12] Therefore, it must be concluded that the court follows the estoppel theory of private easements existing by virtue of reliance on a plat or map.[13]

The abutter's private easement rights have been strictly limited in this jurisdiction. In *Turner v. Davisson*,[14] where the plaintiffs attempted to enjoin the obstruction of an alleged private easement, the court held that, even conceding the point that they were abutting owners, they could not enjoin. The court, in distinguishing an earlier case,[15] reasoned that, since they had acquired the abutting strip through adverse possession, they could not claim of a common grantor and therefore as against other common grantees could not enforce a private easement. If Washington followed the easement by implication theory, this result would seem faulty. However, following the

[10] Annot. 7 A.L.R.2d 608 (1949).

[11] *Ibid.*

[12] Howell v. King County, 16 Wn.2d 557, 134 P.2d 80 (1943); Van Buren v. Trumbull, 92 Wash. 691, 159 Pac. 891 (1916); Burkhard v. Bowen, 32 Wn.2d 613, 203 P.2d 361 (1949); Brown v. Olmsted, 49 Wn.2d 210, 299 P.2d 564 (1956).

[13] Burkhard v. Bowen, *supra* note 12, noted 26 WASH. L. REV. 142 (1949); Van Buren v. Trumbull, *supra* note 12.

[14] 47 Wn.2d 375, 287 P.2d 726 (1955).

[15] Burkhard v. Bowen, 32 Wn.2d 613, 203 P.2d 361 (1949).

estoppel theory, this result is right, as upon taking the land by adverse possession a new chain of title is started, and former rights of easement that had benefited successive owners (common grantees) cannot be acquired by the adverse possession.

There is only one other circumstance where the court has held that the private easement rights of the abutting property owners were extinguished: where the owner of a dominant estate purchased the land at a tax foreclosure sale and could not therefore claim under a common grantor, since foreclosure extinguished all prior interests in the land.[16] This rule may no longer be the law, as the 1959 legislature amended RCW 84.64 by adding:

> Any foreclosure of delinquent taxes on any tract, lot or parcel of real property subject to such easement or easements, and any tax deed issued pursuant thereto shall be subject to such easement or easements, provided such easement or easements were established of record prior to the year for which the tax was foreclosed.[17]

This statute makes it possible for the grantee to trace his title back through the county to the original grantor for the purposes of establishing the right to a private easement. The only question remaining is whether the recording or dedication of the plat constitutes an easement "established of record."[18]

Prior to the *Capitol Hill* case, the Washington court had not been called upon to determine the rights of nonabutting property owners who purchased in reliance on a map or plat. The cases cited in the *Capitol Hill* case deal only with abutting land owners' rights.[19] By following the estoppel theory of easement existing by virtue of reliance on the plat referred to in the deed, it is at once understandable that, since the plaintiffs in this case were not abutting property owners, they could not complain about the vacation of the street. Further, since only an easement which is appurtenant to the land can be designated as a vested right, it is evident that the easement cannot be considered a vested right which was interfered with by the city's vacation.

The court failed to discuss the possibility of easement rights of

[16] Brown v. Olmsted, 49 Wn.2d 210, 299 P.2d 564 (1956).
[17] Laws 1959, c. 129.
[18] Another problem that may arise under the amendment is what happens to a servient estate when sold at a tax foreclosure sale. Judging from previous cases (cited in note 12) which hold that the abutting property owner definitely does have a private right of easement in the street abutting his property, it would seem that the servient estate would also still be subject to the easements of the dominant estates.
[19] See note 12, *supra*.

one common grantee as against the other, which cannot be considered vested rights passing with the conveyance of the property. If both the plaintiffs and the defendants are indeed common grantees, then under the estoppel doctrine of easement, they would have a cause of action to enjoin the obstruction of that easement by the other. However, in refusing to allow the plaintiffs to enjoin the defendant's obstruction of the vacated street, the court used language indicating adherence to the "narrow" rule. In using the "necessary for reasonable access" test, the court denied easement rights to these nonabutting property owners without having previously defined the limits of that standard.

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STATE AND LOCAL GOVERNMENT

Municipal Corporations—Labor Unions—Right of Municipal Employees to Strike—Governmental and Proprietary Functions. In *Port of Seattle v. International Longshoremen's Union*,[1] the Washington court pronounced that municipal corporations are immune to strikes which would endanger the public health or safety.

The pertinent facts of the case under review are as follows: The Port of Seattle is classified as a political subdivision of the state and a municipal corporation. Its functions include the operation, development, and regulation of a system of harbor improvements and rail-and-transfer-terminal facilities within that system. The private operators of port and dock facilities in the area had collective bargaining contracts with Local 9 of the International Longshoremen's and Warehousemen's Union. The port employed about 350 employees, 24 of whom were union members at the time of the controversy. While the port made use of the union's hiring hall, it had consistently refused to enter into a collective bargaining contract with the union. The union made demands for higher wages for certain of its members who were employed by the port. Upon rejection of these demands, the union members went on strike and began picketing, which resulted in the cessation of the port's operations. On the same day, January 18, 1958, the port filed a bill to enjoin the union from striking and picketing. The trial court concluded the strike was illegal and granted a temporary injunction on January 22, 1958.

This decision was affirmed by the Washington supreme court. The court began its rationale by taking recognition of the two conflicting

[1] 152 Wash. Dec. 267, 324 P.2d 1099 (1958).